

1 Gillian Wade, Esq. (State Bar No. 229124)  
2 [gwade@milsteinadelman.com](mailto:gwade@milsteinadelman.com)  
3 Sara D. Avila (State Bar. No. 263213)  
4 [savila@milsteinadelman.com](mailto:savila@milsteinadelman.com)  
5 **MILSTEIN ADELMAN, LLP**  
6 10250 Constellation Boulevard, 14<sup>th</sup> Floor  
7 Los Angeles, California 90067  
8 Telephone: (310) 396-9600  
9 Facsimile: (310) 396-9635

10 Allan Kanner, Esq. (State Bar No. 109152)  
11 [a.kanner@kanner-law.com](mailto:a.kanner@kanner-law.com)

12 Conlee Whiteley, Esq. (*Pro Hac Vice*)  
13 [c.whiteley@kanner-law.com](mailto:c.whiteley@kanner-law.com)

14 Cynthia St. Amant, Esq. (*Pro Hac Vice*)  
15 [c.stamant@kanner-law.com](mailto:c.stamant@kanner-law.com)

16 **KANNER & WHITELEY, L.L.C.**

17 701 Camp Street  
18 New Orleans, LA 70130  
19 Telephone: (504) 524-5777  
20 Facsimile: (504) 524-5763

21 Attorneys for Plaintiff

22 **UNITED STATES DISTRICT COURT**  
23 **CENTRAL DISTRICT OF CALIFORNIA**

24 DAVID SANCHEZ, individually and  
25 on behalf of all others similarly  
26 situated,

27 Plaintiff,  
28 v.

DOLGENCORP, LLC, (d/b/a  
DOLLAR GENERAL,  
CORPORATION), a Kentucky limited  
liability company,

Defendant.

Case No. 2:15-cv-9730

CLASS ACTION COMPLAINT AND  
DEMAND FOR JURY TRIAL

1. Violations of the Consumer Legal  
Remedies Act, *California Civil  
Code §1750, et seq.*
2. Violations of False and Misleading  
Advertising Law, *California  
Business and Professions Code  
§17500, et seq.*
3. Violations of Unfair Competition  
Law, *California Business and  
Professions Code §17200, et seq.*  
(unfair and fraudulent prongs)
4. Violations of Unfair Competition  
Law, *California Business and  
Professions Code §17200, et seq.*  
(unlawful conduct prong)

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5. Violations of the Song-Beverly Consumer Warranty Act, *California Civil Code §§1792 & 1791.1(a)*
  6. Violations of the Song-Beverly Consumer Warranty Act, *California Civil Code §§1792.1 & 1791.1(b)*
  7. Breach of Implied Warranty of Merchantability
  8. Breach of Implied Warranty of Fitness for a Particular Purpose

Plaintiff David Sanchez (“Plaintiff”), individually and on behalf of all others similarly situated, makes the following allegations based on his personal knowledge of his own acts and, otherwise, upon information and belief based on investigation of counsel.

#### **NATURE AND SUMMARY OF THE ACTION**

1. Plaintiff, by and through undersigned counsel, brings this action both on his own behalf and on behalf of the class and sub-class defined below, comprised of all individuals similarly situated nationwide and within the State of California, to redress the unlawful and deceptive practices employed by Defendant, DOLGENCORP, LLC, (d/b/a Dollar General, Corporation), (hereinafter “Dollar General” or “Defendant”) in connection with its marketing and sale of its company-branded motor oil sold in its stores.

2. Dollar General sells an entire line of company-branded motor oils (labeled “DG”) that are obsolete and potentially harmful to its customers’ automobiles by using deceptive and misleading sales and marketing tactics including: (a) the positioning of its DG line of obsolete motor oils immediately adjacent to the more expensive standard- and premium-quality motor oils manufactured by its competitors and (b) failing to adequately warn its customers that its DG motor oil is unsuitable for use by the vast majority, if not all, of its customers.

3. Dollar General's unlawful and deceptive business practices violate California's Unfair Competition Law, *Business & Professions Code* §17200, et seq. ("UCL"); California's False Advertising Law, *Business & Professions Code* §17500, et seq. ("FAL"); California's Consumer Legal Remedies Act, *Civil Code* §1750, et seq. ("CLRA"); the Song-Beverly Consumer Warranty Act, *Civil Code* §§ 1792 and 1791, et seq.; and the contractual rights of consumers.

## **JURISDICTION AND VENUE**

4. Jurisdiction is proper in this Court pursuant to the Class Action Fairness Act, 28 U.S.C. §§1332(d), because members of the proposed Class and Sub-Class are citizens of States different from Defendant's home states of Kentucky and Tennessee, there are more than 100 Class Members, and the amount-in-controversy exceeds \$5,000,000 exclusive of interest and costs.

5. This Court has jurisdiction over Defendant because Defendant is a foreign corporation or association authorized to do business in California and registered

1 with the California Secretary of State, does sufficient business in California, and  
2 has sufficient minimum contacts with California or otherwise intentionally avails  
3 itself of the laws and markets of California, through the promotion, sale, marketing  
4 and distribution of its merchandise in California, to render the exercise of  
5 jurisdiction by the California courts permissible.  
6  
7

8 6. Venue is proper in this District under 28 U.S.C. §1331(b) and (c) because  
9 Defendant's improper conduct alleged in this complaint occurred in, was directed  
10 from, and/or emanated from this judicial district, because Defendant has caused  
11 harm to Class Members residing in this district, and/or because the Defendant is  
12 subject to personal jurisdiction in this district.  
13  
14

15 7. In addition, Defendant operates over 100 stores in California and has  
16 received substantial compensation from California consumers who purchase goods  
17 from Defendant.  
18  
19

### **PARTIES**

20 8. Plaintiff David Sanchez is an individual adult resident of Norwalk in Los  
21 Angeles County, California and is a member of the Class and Sub-Class alleged  
22 herein.  
23  
24

25 9. Plaintiff purchased Dollar General's DG SAE 10W-30 motor oil from Dollar  
26 General's store in Norwalk, California, on three separate occasions in 2014 for his  
27 1999 Honda Accord.  
28

10. Defendant DOLGENCORP, LLC, d/b/a Dollar General Corporation, is incorporated under the laws of the State of Kentucky, with its headquarters located at 100 Mission Ridge, Goodlettsville, Tennessee. Dollar General maintains over 100 stores throughout the state of California.

11. At all relevant times, Defendant produced, marketed, distributed and sold its obsolete DG-branded motor oil in its stores throughout the United States, including in the State of California, utilizing deceptive and misleading marketing and sales practices to induce Plaintiff and Class Members into purchasing its obsolete motor oil for use in their modern-day vehicles knowing that its motor oil is obsolete and likely to cause damage to any such vehicle.

## **FACTUAL ALLEGATIONS**

12. Dollar General operates a chain of variety stores headquartered in Goodlettsville, Tennessee. As of January 2015, Dollar General operated over 12,198 stores in 43 states, with close to 150 stores located in the State of California.

13. Dollar General is a discount retailer focused on low and fixed income consumers in small markets. Dollar General's business model includes locating its stores in rural, suburban communities, and in its more densely populated markets, Dollar General's customers are generally from the neighborhoods surrounding the stores. Dollar General's stores are located with the needs of its core customers (low and fixed income households) in mind.

1       14. Dollar General offers basic every day and household goods, along with a  
2 variety of general merchandise at low prices to provide its customers with one-stop  
3 shopping opportunities generally in their own neighborhoods.  
4

5       15. In addition to offering name brand and generic merchandise, Dollar  
6 General distributes and markets its own lines of inexpensive household products,  
7 which bear the designation “DG.” DG lines include “DG Auto,” “DG Hardware”  
8 “DG Health” and “DG Office.”  
9

10      16. Dollar General’s DG Auto line consists of three types of obsolete motor  
11 oil: DG SAE 10W-30, DG SAE 10W-40 and DG SAE-30 that fail to protect and  
12 can actively damage, modern-day automobiles.  
13

14      17. Motor oils lubricate the engines of the automobiles driven by individuals.  
15 Their main function is to reduce wear on an engine’s moving parts. Motor oils  
16 also inhibit corrosion, improve sealing and keep engines properly cooled.  
17

18      18. Motor oils have evolved in parallel with the automobiles they are meant to  
19 protect. Institutions like the Society of Automotive Engineers (“SAE”) employ  
20 rigorous tests to ensure that motor oils meet evolving standards relating to, among  
21 other criteria, sludge buildup, temperature volatility, resistance to rust, resistance to  
22 foaming, resistance to oil consumption, homogeneity and miscibility.  
23

25      19. Motor oils designed to protect engines from earlier eras do not protect, and  
26 can harm, modern-day engines. Thus, motor oil that would be suitable to use in an  
27

1 engine manufactured in the 1980's or earlier is not suitable for use in modern-day  
2 engines.  
3

4 20. Dollar General engages in the unfair, unlawful, deceptive and fraudulent  
5 practice of marketing, selling and causing to be manufactured, obsolete motor oil  
6 without adequately warning that its product is unsuitable for, and can harm, the  
7 vehicles driven by the overwhelming majority of Dollar General's customers (and  
8 the public at large).  
9

10 21. Dollar General misleads customers by using product placement tactics and  
11 misleading product labels which obscure a critical fact from Dollar General's  
12 customers: Dollar General's motor oil is unfit for, and can harm, the vehicles  
13 driven by the vast majority, if not all, of its customers.  
14

15 22. Dollar General's in-house motor oils use the same or similar SAE  
16 nomenclature on the front of its labels (*e.g.*, 10W-30, 10W-40, SAE 30) as do the  
17 other mainstream, non-harmful, and actually useful brands of motor oil sold by  
18 Dollar General. Dollar General places its DG brand motor oil next to these brand  
19 motor oil products on its shelves.  
20

21 23. Additionally, the front label of DG's SAE 10W-30 and SAE 10W-40  
22 motor oils says, "Lubricates and protects your engine."  
23

24 25. However, among the small print on the back label of Dollar General's  
26 motor oils is the statement that DG SAE 10W-30 and DG SAE 10W-40 are  
27 admittedly "not suitable for use in most gasoline powered automotive engines built  
28

1 after 1988” and “may not provide adequate protection against the build-up of  
2 engine sludge” and that DG SAE 30 is admittedly “not suitable for use in most  
3 gasoline powered automotive engines built after 1930,” and its “use in modern  
4 engines may cause unsatisfactory engine performance or equipment harm.”

5       25. Dollar General conceals this language by rendering it in small font and  
6 confining it to the product’s back label, which is not visible when the products are  
7 on the store shelves.

8       26. Dollar General further conceals this language by placing it below a  
9 misleading and contradictory message regarding the product. For the DG SAE  
10 10W-30 and DG SAE 10W-40 products, that message reads: “SAE 10W-30 motor  
11 oil is an all-season, multi-viscosity, heavy duty detergent motor oil recommended  
12 for gasoline engines in older model cars and trucks. This oil provides oxidation  
13 stability, antiwear performance, and protection against deposits, rust and  
14 corrosion.” For the DG SAE 30 product, that message reads: “DG Quality SAE  
15 30 is a non-detergent motor oil designed for use in older engines where  
16 consumption may be high and economical lubricants are preferred.”

17       27. Few, if any, Dollar General customers drive vehicles for which these  
18 products are safe, and the use of the term “older” is a relative term that does not  
19 inform a reasonable consumer that these motor oils are not safe for cars  
20 manufactured within the past *27 years*, or in the case of Dollar General’s DG SAE  
21 30, the past *85 years*.

1       28. Dollar General further disguises the obsolete and harmful nature of its  
2 motor oils with its positioning of these motor oils on its shelves in a misleading  
3 manner. Specifically, Dollar General places similar quantities of its in-house brand  
4 motor oils, DG SAE 10W-30, DG SAE 10W-40 and DG SAE 30, none of which is  
5 suitable for modern-day automobiles, adjacent to an array of other motor oils  
6 which are suitable for modern-day vehicles.

9       29. Dollar General places its in-house brand motor oils on the same shelves, in  
10 the same or similar quantities, as PEAK, Pennzoil, Castrol and other legitimate  
11 motor oils that are suitable for modern-day automobiles. Each type of motor oil  
12 uses the SAE nomenclature on the front, *e.g.*, 10W-40. The only apparent  
13 difference is the price, as Dollar General's motor oils are less expensive than the  
14 others.

17       30. Defendant's product display conceals the fact that its DG-brand motor oils  
18 have an extremely obscure and limited use and are likely to cause damage to the  
19 engines of most of its customers' cars. Defendant's product positioning and the  
20 deceptive label on the motor oil are likely to deceive reasonable consumers.

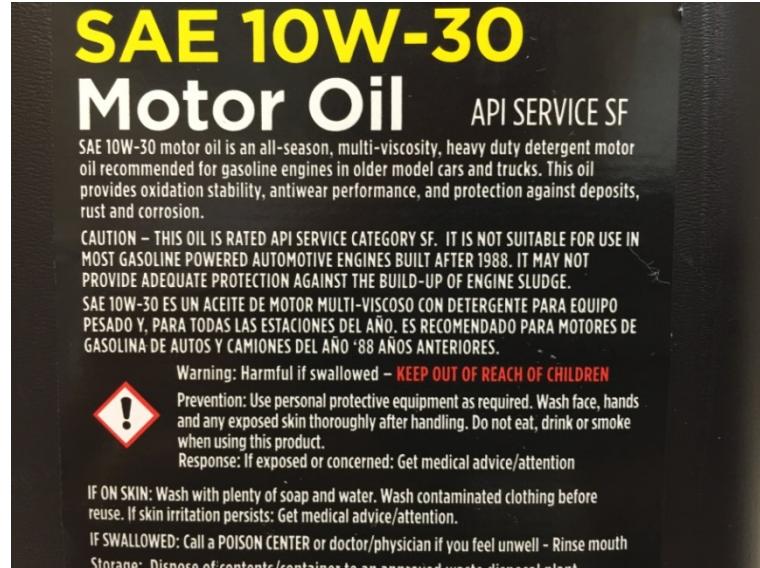
22       31. Dollar General also fails to warn its customers adequately of the obsolete  
23 nature of DG-branded motor oils or of the dangers DG-branded motor oils pose to  
24 the very automobiles its customers are trying to protect by purchasing Dollar  
25 General's motor oil. An adequate warning for Dollar General's obsolete motor oils  
26 would be displayed conspicuously and would inform Dollar General's customers  
27

1 of the appropriate uses, if any, of the various types of Dollar General motor oils.  
 2 But Dollar General provides its customers with no such conspicuous warnings.  
 3 Instead, the company buries the aforementioned statements on the back of its  
 4 products in small type where customers are unlikely to encounter them.

5  
 6 32. DG SAE 10W-30 bears the following labels on its front (left) and back  
 7 (right):  
 8



9  
 10  
 11  
 12  
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 15  
 16 The photograph below is a close-up of DG SAE 10W-30's back label, which  
 17 includes the warnings, "IT IS NOT SUITABLE FOR USE IN MOST GASOLINE  
 18 POWERED AUTOMOTIVE ENGINES BUILT AFTER 1988" and "IT MAY  
 19 NOT PROVIDE ADEQUATE PROTECTION AGAINST THE BUILD-UP OF  
 20 ENGINE SLUDGE":  
 21  
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33. DG SAE 10W-40 bears the following labels on its front (left) and back (right):



The following photograph is a close-up of DG SAE 10W-40's back label, which includes the warnings, "IT IS NOT SUITABLE FOR USE IN MOST GASOLINE POWERED AUTOMOTIVE ENGINES BUILT AFTER 1988" and "IT MAY NOT PROVIDE ADEQUATE PROTECTION AGAINST THE BUILD-UP OF ENGINE SLUDGE":



10        34. DG SAE 30 bears the following the labels on its front (left) and back  
11  
12 (right):



13  
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16  
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19        The photograph below is a close-up of DG SAE 30's back label which includes the  
20        warnings, "IT IS NOT SUITABLE FOR USE IN MOST GASOLINE POWERED  
21        AUTOMOTIVE ENGINES BUILT AFTER 1930" and "USE IN MODERN  
22        ENGINES MAY CAUSE UNSATISFACTORY ENGINE PERFORMANCE OR  
23        EQUIPMENT HARM":  
24  
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35. Dollar General's entire line of low-cost motor oil is unsuitable for the modern-day vehicles driven by its customers and has no business being sold by, except that Dollar General is successfully deceiving a sufficient number of customers to make this fraudulent practice worthwhile. It is unfair, unlawful, deceptive and fraudulent for Dollar General to distribute, market, and sell an entire line of motor oil that is unfit for, and presents concrete dangers to, the automobiles driven by the vast majority of its customers.

36. Dollar General knew or should have known that its customers are being deceived by its marketing strategy based on the quantity of its obsolete DG motor oil sold compared to the limited number of automobiles for which these oils are appropriate.

37. California's consumer protection laws, and the consumer protection laws of every other State and the District of Columbia, are designed to protect consumers from this type of false advertising and predatory conduct.

1       38. Defendant's unfair and deceptive course of conduct victimized all  
2 purchasers of Dollar General's motor oil from Dollar General, throughout the  
3 country.  
4

5       39. As a direct and proximate result of Dollar General's deceptive and  
6 fraudulent practices, Plaintiff and the Class Members purchased a product they  
7 would not have otherwise purchased and have suffered and will continue to suffer  
8 economic damages. Indeed, the products are worthless.  
9

10       40. In addition, many Class Members have sustained damage to their  
11      automobiles as a result of the use of Dollar General's DG-branded motor oil and  
12      have suffered and will continue to suffer economic damage as a result.  
13

14  
15       41. Plaintiff therefore brings the statutory and common law claims alleged  
16 herein to halt Dollar General's deceptive practices and to obtain compensation for  
17 the losses suffered by Plaintiff and all Class Members.

# **Unjust Enrichment**

20 42. Plaintiff and Class Members have conferred substantial benefits on the  
21 Defendant by purchasing its useless and harmful motor oil, and Dollar General  
22 has consciously and willingly accepted and enjoyed these benefits.

24       43. Defendant knew or should have known that consumers' payments for its  
25       obsolete and harmful motor oil were given and received with the expectation that  
26       the motor oil would lubricate and protect consumers' engines and would not be  
27       harmful to their vehicles.  
28

1       44. Because of the fraudulent misrepresentations, concealments, and other  
2       wrongful activities described herein, Defendant has been unjustly enriched by its  
3       wrongful receipt of Plaintiff's and Class Members' monies.  
4

5       45. As a direct and proximate result of Defendant's wrongful conduct and  
6       unjust enrichment, Plaintiff and Class Members have suffered damages in an  
7       amount to be determined at trial.  
8

9       46. Defendant should be required to account for and disgorge all monies,  
10      profits and gains which it has obtained or will unjustly obtain in the future at the  
11      expense of consumers.

## **CLASS ACTION ALLEGATIONS**

14  
15     47. Plaintiff brings this class action pursuant to Rule 23(b)(2) and 23(b)(3) of  
16 the Federal Rules of Civil Procedure on behalf of himself and all members of the  
17 following Class:

19 All persons in the United States who purchased Defendant's DG-  
20 branded motor oil, DG SAE 10W-30, DG SAE 10W-40 and/or DG SAE  
30, for personal use and not for re-sale, since December 2011.

25 All persons in the State of California who purchased Defendant's DG-  
26 branded motor oil, DG SAE 10W-30, DG SAE 10W-40 and/or DG SAE  
30, for personal use and not for re-sale, since December 2011.

1       49. Subject to additional information obtained through further investigation  
2 and discovery, the foregoing definition of the Class and Sub-Class may be  
3 expanded or narrowed by amendment or amended complaint.  
4

## FRCP 23(a) Factors

14  
15       **51. Numerosity.** Membership in the Class and Sub-Class is so numerous that  
16 separate joinder of each member is impracticable. The precise number of Class  
17 Members is unknown at this time but can be readily determined from Defendant's  
18 records. Plaintiff reasonably estimates that there are hundreds of thousands of  
19 persons in the Class and tens of thousands of persons in the Sub-Class.  
20

21       **52. Adequacy of Representation.** Plaintiff will fairly and adequately  
22 represent and protect the interests of the members of the Class and Sub-Class.  
23  
24 Plaintiff has retained counsel highly experienced in complex consumer class action  
25 litigation and intends to prosecute this action vigorously. Plaintiff is a member of  
26 the Class and Sub-Class described herein and does not have interests antagonistic  
27 to, or in conflict with, the other members of the Class and Sub-Class.  
28

53. **Typicality.** Plaintiff's claims are typical of the claims of the members of the Class and Sub-Class. Plaintiff and all members of the Class and Sub-Class purchased obsolete, harmful, deceptively labeled and deceptively marketed motor oil from Dollar General and were subjected to Defendant's common course of conduct.

#### 54. Existence and Predominance of Common Questions of Law and Fact.

There are numerous and substantial questions of law and fact common to all Class Members sufficient to satisfy Rule 23(a), and that control this litigation and predominate over any individual issues for purposes of Rule 23(b)(3). Included within the common questions are:

- a) The amount of Defendant's in-house brand motor oil it sold relative to the other brands of oil on its shelves;
  - b) The amount of Defendant's in-house brand motor oil it sold relative to the limited number of automobiles for which these motor oils are appropriate;
  - c) Whether Defendant studied the effect of its product placement on its shelves;
  - d) Whether Defendant studied or tested its label and the effect of its labels on consumers' perceptions;
  - e) Whether Defendant studied the susceptibility of consumers;

- 1 f) The cost to Defendant to manufacture, distribute, market and sell its  
2 DG-branded motor oil compared to the revenue it received from its  
3 sales;
- 4 g) Whether Defendant misrepresented the safety and suitability of its  
5 DG-branded motor oil sold at its stores nationwide;
- 6 h) Whether Defendant's conduct of placing the obsolete Dollar General  
7 motor oil next to legitimate, useful motor oil is likely to deceive  
8 reasonable consumers;
- 9 i) Whether the warnings provided on the labels of Dollar General's  
10 motor oil were adequate;
- 11 j) Whether Defendant's conduct of hiding the warnings on the back  
12 label is likely to deceive reasonable consumers;
- 13 k) Whether Defendant deliberately misrepresented or failed to disclose  
14 material facts to Plaintiff and Class Members regarding the obsolete  
15 and harmful nature of its DG-branded motor oil;
- 16 l) Whether Dollar General's conduct, as alleged herein, is unlawful,  
17 unfair, or fraudulent under California's Unfair Competition Law,  
18 California Business & Professions Code §17200, *et seq.*;
- 19 m) Whether Dollar General's conduct, as alleged herein, violates  
20 California's Consumers Legal Remedies Act, California Civil Code §  
21 1750, *et seq.*;

- n) Whether Dollar General's conduct, as alleged herein, violates California's False Advertising Law, California Business and Professions Code § 17500, *et. seq.*;
  - o) Whether the Class is entitled to injunctive relief prohibiting the wrongful practices alleged herein and enjoining such practices in the future;
  - p) Whether Plaintiff and members of the Class are entitled to restitution;
  - q) Whether compensatory, consequential and punitive damages ought to be awarded to Plaintiff and Class Members;
  - r) Whether Plaintiff and Class Members are entitled to attorneys' fees and expenses, and in what amount;
  - s) The proper method for calculating damages and restitution classwide; and
  - t) Whether Plaintiff and Class Members are entitled to declaratory and/or other equitable relief.

FRCP 23(b)(2)

55. Defendant has acted on grounds generally applicable to the entire Class and Sub-Class, thereby making final injunctive relief and/or corresponding declaratory relief appropriate with respect to the Classes as a whole. The prosecution of separate actions by individual Class Members would create the risk

1 of inconsistent or varying adjudications with respect to individual member of the  
2 Classes that would establish incompatible standards of conduct for Defendant.  
3

4 56. Injunctive relief is necessary to prevent further fraudulent and unfair  
5 business practices by Defendant. Money damages alone will not afford adequate  
6 and complete relief, and injunctive relief is necessary to restrain Defendant from  
7 continuing to commit its deceptive, fraudulent and unfair policies.  
8

9 **FRCP 23(b)(3)**

10 57. **Common Issues Predominate:** As set forth in detail herein above, common  
11 issues of fact and law predominate because all of Plaintiff's UCL, FAL CLRA, and  
12 warranty claims are based on a deceptive common course of conduct. Whether  
13 Dollar General's conduct is likely to deceive reasonable consumers and breaches  
14 the implied warranties of merchantability and fitness for a particular purpose is  
15 common to all members of the Classes and are the predominate issues, and  
16 Plaintiff can prove the elements of his claims on a class-wide basis using the same  
17 evidence as would be used to prove those elements in individual actions alleging  
18 the same claims  
19

20 58. **Superiority.** A class action is superior to other available methods for the  
21 fair and efficient adjudication of this controversy for at least the following reasons:  
22

- 23 a) Given the size of the claims of individual Class Members, as well as  
24 the resources of Dollar General, few Class Members, if any, could  
25 afford to seek legal redress individually for the wrongs alleged herein;  
26  
27  
28

- 1                   b) This action will permit an orderly and expeditious administration of  
2                   the claims of Class Members, will foster economies of time, effort and  
3                   expense and will ensure uniformity of decisions;
- 4                   c) Any interest of Class Members in individually controlling the  
5                   prosecution of separate actions is not practical, creates the potential  
6                   for inconsistent or contradictory judgments and would create a burden  
7                   on the court system;
- 8                   d) Without a class action, Class Members will continue to suffer  
9                   damages, Defendant's violations of law will proceed without remedy,  
10                  and Defendant will continue to reap and retain the substantial  
11                  proceeds derived from its wrongful and unlawful conduct. Plaintiff  
12                  and Class Members have suffered damages as a result of Defendant's  
13                  unlawful and unfair conduct. This action presents no difficulties that  
14                  will impede its management by the Court as a class action.

15  
16                  **59. Notice to the Class:** Notice can be accomplished by publication for most  
17                  Class Members, and direct notice may be possible for those who are members of a  
18                  Dollar General rewards program or for whom Dollar General has specific  
19                  information. Further, publication notice can be easily targeted to Dollar General  
20                  customers because Defendant only sells the subject motor oil in its own stores.  
21  
22  
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1       60. The Class members have suffered economic harm and suffered injury in  
2       fact as a result of Dollar General's misconduct, in that each member purchased  
3       Dollar General's useless and harmful motor oil.  
4

## **CLAIMS FOR RELIEF**

7       61. Based on the foregoing allegations, Plaintiff's claims for relief include the  
8 following:

**FIRST CAUSE OF ACTION**  
**VIOLATION OF CALIFORNIA CIVIL CODE § 1750, *et seq.***  
*California Civil Code §1750, et seq.*  
(on behalf of the California Sub-Class)

12       62. Plaintiff incorporates by this reference the allegations contained in the  
13 preceding paragraphs as if fully set forth herein.  
14

19       64. As alleged hereinabove, Plaintiff has standing to pursue this claim as  
20 Plaintiff has suffered injury in fact and lost money or property as a result of  
21 Defendant's actions as set forth herein

23       65. Plaintiff and members of the California Sub-Class are consumers as  
24 defined by California Civil Code section 1761(d). The DG-branded motor oils are  
25 goods within the meaning of California Civil Code section 1761(a).

1       66. Plaintiff is concurrently filing the declaration of venue required by *Civil*  
2       *Code* § 1780(d) with this complaint. This cause of action is asserted on behalf of  
3       a subclass of the putative California Sub-Class, comprised of those members who  
4       purchased DG-branded motor oil within three (3) years of the commencement of  
5       this action. Plaintiff and members of the Sub-Class are individuals who have  
6       purchased the goods (the DG-branded motor oil) for personal use.

9       67. Specifically, as described herein, Dollar General made the following  
10      representations, expressly or by implication to Plaintiff and Sub-Class Members  
11      about the deceptively labeled motor oil: (i) that Dollar General's DG-branded  
12      motor oil was suitable for use in its customers' automobiles; (ii) that Dollar  
13      General's DG-branded motor oil was safe to use in its customers' automobiles; and  
14      (iii) that Dollar General's DG-branded motor oil was of similar quality as the other  
15      motor oils beside which Dollar General's DG-branded motor oils were positioned  
16      on the shelves in Defendant's stores.

17       68. These representations were materially misleading.

18       69. Defendant violated and continues to violate the CLRA by engaging in the  
19      following practices proscribed by California Civil Code section 1770(a) in  
20      transactions with Plaintiff and members of the Sub-Class, which were intended to  
21      result in, and did result in, the sale of DG-branded motor oils:

- 22           a. By representing that DG-branded motor oils "lubricate[] and  
23                   protect[] your engine," placing the DG-branded motor oils on

shelves next to legitimate motor oils intended for use in modern day vehicles, and failing to adequately warn consumers of the harm their products can cause, Defendant is representing that DG-branded motor oils have characteristics, uses or benefits which they do not have, in violation of Civ. Code § 1770(a)(5);

- b. By representing that DG-branded motor oils “lubricate[] and protect[] your engine,” and placing the DG-branded motor oils on shelves next to legitimate motor oils intended for use in modern day vehicles, and failing to adequately warn consumers of the harm their products can cause, Defendant is representing that DG-branded motor oils are of a particular standard, quality, or grade, when they are of another, in violation of Civ. Code § 1770(a)(7);
- c. By representing that DG-branded motor oils “lubricate[] and protect[] your engine,” and placing the DG-branded motor oils on shelves next to legitimate motor oils intended for use in modern day vehicles, and failing to adequately warn consumers of the harm their products can cause, Defendant is “[a]dvertising goods... with intent not to sell them as advertised,” in violation of Civ. C. 1770(a)(9); and,
- d. By representing that DG-branded motor oils “lubricate[] and protect[] your engine,” and placing the DG-branded motor oils on

1 shelves next to legitimate motor oils intended for use in modern  
2 day vehicles, and failing to adequately warn consumers of the harm  
3 their products can cause, Defendant has represented that the  
4 products have “been supplied in accordance with a previous  
5 representation when it has not,” in violation of Civ. C. 1770(a)(16).  
6  
7

8 70. Defendant violated the CRLA by failing to adequately warn Plaintiff and  
9 members of the Sub-Class that DG-branded motor oils are not suitable for, and can  
10 harm, most vehicles on the road.  
11

12 71. Defendant’s actions as described herein were done with conscious  
13 disregard of Plaintiff’s rights, and Defendant was wanton and malicious in its  
14 concealment of the same.  
15

16 72. Defendant’s wrongful business practices constituted, and constitute, a  
17 continuing course of conduct in violation of the CLRA because Defendant  
18 continues to sell the obsolete oil without adequate warnings and represent the DG-  
19 branded motor oils have characteristics and abilities which the products do not  
20 have, and has thus injured and continues to injure Plaintiff and the Sub-Class.  
21  
22

23 73. Plaintiff and other members of the putative Sub-Class have suffered  
24 injury in fact and have lost money as a result of Defendant’s deceptive conduct.  
25 Plaintiff would not have purchased the DG-branded motor oil if he had known it  
26 was obsolete and not suitable for his vehicle, was not capable of protecting or  
27 lubricating his vehicle’s engine, and could harm his vehicle.  
28

1       74. Pursuant to *Civil Code* § 1780(a), Plaintiff seeks injunctive relief in the  
2 form of enjoining Defendant from (1) selling obsolete oil; (2) expressly or  
3 impliedly representing to current and potential purchasers of the DG-branded  
4 motor oils that the product is suitable for use in modern day vehicles manufactured  
5 after 1988, or in the case of SAE-30, after 1930; (3) providing inadequate warnings  
6 as to the harm the oil can cause. Plaintiff also seeks injunctive relief in the form of  
7 corrective advertising requiring Defendant to disseminate truthful, adequate  
8 disclosures and warnings about the actual uses (to the extent there are any) of the  
9 DG-branded motor oils.

10      13     75. Plaintiff and members of the Sub-Class shall be irreparably harmed if such  
11 an order is not granted.  
12

13      16     76. On December 17, 2015, Plaintiff sent Defendant notice advising  
14 Defendant it violated and continues to violate, Section 1770 of the CLRA (the  
15 “Notice”) concurrently with the filing of this complaint. The Notice complies in  
16 all respects with Section 1782 of the CLRA. Plaintiff sent the Notice by Certified  
17 U.S. Mail, return-receipt requested to Defendant at Defendant’s principal place of  
18 business. Plaintiff’s Notice advised Defendant they must correct, repair, replace or  
19 otherwise rectify its conduct and the product alleged to be in violation of Section  
20 1770, including that Defendant cease falsely and misleadingly advertising its DG  
21 brand motor oil, provide corrective advertising and provide restitution to its  
22 customers who paid money to Defendant for said products. However, Plaintiff  
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24  
25  
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28

1 advised Defendant that if it fails to respond to Plaintiff's demand within thirty  
2 (30) days of receipt of this notice, pursuant to Sections 1782(a) and (d) of the  
3 CLRA, Plaintiff will amend this complaint to seek restitution, actual damages and  
4 punitive damages.

5  
6 **SECOND CAUSE OF ACTION**  
7

8 **Violations of False and Misleading Advertising Law (FAL)**  
9 ***California Business and Professions Code §17500, et seq.***  
**(on behalf of the California Sub-Class)**

10 77. Plaintiff hereby incorporates by reference each of the proceeding  
11 allegations as if fully set forth herein.

12 78. At all times relevant hereto, Defendant was a "person" as that term is  
13 defined in *California Business and Professions Code* §17506.

14 79. *California Business and Professions Code* §17500 provides that "[i]t is  
15 unlawful for any person, firm, corporation or association with intent directly or  
16 indirectly to dispose of . . . personal property . . . to induce the public to enter into  
17 any obligation relating thereto, to make or disseminate or cause to be made or  
18 disseminated before the public in this state . . . any statement . . . which is untrue or  
19 misleading, and which is known, or which by the exercise of reasonable care  
20 should be known, to be untrue or misleading . . ."

21 80. In its advertising for the obsolete DG-branded motor oil, Defendant  
22 makes false and misleading statements the product will "lubricate and protect  
23 your engine," deceptively places the products next to legitimate motor oils, and  
24  
25

1 fails to conspicuously or adequately warn consumers that the DG-branded motor  
2 oil is not suitable for most vehicles and can harm vehicles manufactured after  
3 1988 (or 1930).

5       81. Defendant engaged in the deceptive conduct alleged hereinabove, which  
6 included deceptive and untrue representations regarding DG-branded motor oil  
7 made to induce the public to purchase the products.

9       82. Defendant's act of untrue and misleading advertising presents a continuing  
10 threat to members of the public because their advertisements induce consumers to  
11 purchase its motor oil, which are unsafe and not suitable for use in their  
12 automobiles, instead of other motor oils.

14       83. By its actions, Dollar General is disseminating uniform advertising  
15 concerning its products and services, which by its nature is unfair, deceptive,  
16 untrue, or misleading within the meaning of the *California Business and*  
17 *Professions Code* §17500, *et seq.* Such advertisements are likely to deceive, and  
18 continue to deceive, the consuming public for the reasons detailed above.

21       84. Defendant is aware that its advertising is false in that Defendant knows  
22 DG-branded motor oil is not suitable for most vehicles on the road today, is not  
23 capable of protecting or lubricating the engines of modern day vehicles and that it  
24 does not adequately warn consumers about the harmful effects of the product.

27       85. As a result of the violations of California law described above, Defendant  
28 has been, and will be, unjustly enriched by receipt of millions of dollars in monies

1 received from customers who have purchased and will continue to purchase  
2 obsolete and harmful motor oil from its stores which advertise and/or otherwise  
3 market in this State and this Country, and which materially misrepresent the  
4 quality of its motor oils.

5  
6 86. These misrepresentations and non-disclosures by Dollar General of the  
7 material facts detailed above constitute false and misleading advertising and  
8 therefore constitute a violation of *California Business and Professions Code*  
9 §17500, *et seq.*  
10  
11

12 87. Plaintiff and other members of the putative Sub-Class have suffered injury  
13 in fact and have lost money as a result of Defendant's deceptive conduct. Plaintiff  
14 would not have purchased the DG-branded motor oil if he had known it was  
15 obsolete and not suitable for his vehicle, was not capable of protecting or  
16 lubricating his vehicle's engine, and could harm his vehicle.  
17  
18

19 88. Pursuant to *Business & Professions Code* §§ 17203 and 17535, Plaintiff  
20 and the members of the Sub-Class seek an order of this Court enjoining Defendant  
21 from engaging in the false advertising alleged herein in connection with the  
22 marketing and sale of DG-branded motor oil. Additionally, Plaintiff requests the  
23 money wrongfully acquired by Defendant by means of the unfair competition and  
24 false advertising alleged herein, and will request, in an amended complaint, an  
25 order awarding Plaintiff and the Sub-Class restitution.  
26  
27  
28

**THIRD CAUSE OF ACTION**  
**Violations of the Unfair Competition Law (UCL)**  
**Unfair and Fraudulent Prongs**  
*California Business and Profession Code §17200, et seq.*  
**(on behalf of the California Sub-Class)**

89. Plaintiff incorporates by this reference the allegations contained in the preceding paragraphs as if fully set forth herein.

90. As alleged hereinabove, Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact and has lost money or property as a result of Defendant's actions as set forth herein. Specifically, prior to the filing of this action, Plaintiff purchased DG-branded motor oil for his own personal use. In so doing, he relied upon the false representations referenced above and believed the DG-branded motor oil was legitimate and suitable for use in his vehicle, and was not aware that it could actually harm his vehicle.

91. Defendant is aware that its conduct is likely to deceive reasonable consumers.

92. The misrepresentations, conduct and inadequate disclosures by Defendant are material and constitute an unfair and fraudulent business practice within the meaning of *Business & Professions Code* § 17200, *et seq.*

93. Defendant's business practices, as alleged herein, are unfair because: (1) the injury to the consumer is substantial; (2) the injury is not outweighed by any countervailing benefits to consumers or competition; and (3) consumers could not

1 reasonably have avoided the information because Defendant intentionally mislead  
2 the consuming public by means of the claims, inadequate warnings and conduct  
3 with respect to DG-branded motor oil as set forth herein.

4       94. Defendant's business practices as alleged herein are fraudulent because  
5 they are likely to deceive customers into believing that DG-branded motor oil is  
6 actually useful for the purpose for which it is sold (to protect and lubricate vehicle  
7 engines), and it knows the warnings in small print on the back of products  
8 underneath misleading information about the product characteristics will deceive  
9 consumers into purchasing oil that has no use to them, is worthless, and which can  
10 actually harm their vehicles.

11       95. In addition, Defendant's use of various forms of advertising media to  
12 advertise, call attention to or give publicity to the sale of goods or merchandise  
13 which are not as represented constitutes unfair competition, unfair, deceptive,  
14 untrue or misleading advertising, and an unlawful business practice within the  
15 meaning of *Business & Professions Code § 17200, et seq.*

16       96. Defendant's wrongful business practices constituted, and constitute, a  
17 continuing course of conduct of unfair competition since Defendant is marketing  
18 and selling DG-motor oil in a manner likely to deceive the public.

19       97. Defendant has peddled, and continues to peddle, its misrepresentations  
20 through a nationwide advertising campaign.

1       98. There were reasonably available alternatives to further Defendant's  
2 legitimate business interests, other than the conduct described herein.  
3

4       99. Plaintiff and the putative class members were misled into purchasing DG-  
5 motor oil by Defendant's deceptive and fraudulent conduct as alleged  
6 hereinabove.  
7

8       100. Plaintiff and other putative Sub-Class Members were misled, and,  
9 because the misrepresentations and omissions were uniform and material,  
10 presumably believed that DG-motor oil was capable of lubricating and protecting  
11 modern day vehicle engines and would not harm them.  
12

13       101. Pursuant to *Business & Professions Code* § 17203, Plaintiff and the  
14 members of the Sub-Class seek an order of this Court enjoining Defendant from  
15 engaging in the unfair competition alleged herein and ordering corrective  
16 advertising in connection with the sale of DG-motor oil. Additionally, Plaintiff  
17 will amend this complaint to request an order awarding Plaintiff and the Sub-Class  
18 restitution of the money wrongfully acquired by Defendant by means of the unfair  
19 competition alleged herein.  
20

21       102. Plaintiff and other members of the putative Sub-Class have suffered  
22 injury in fact and have lost money as a result of Defendant's deceptive conduct.  
23 Plaintiff would not have purchased the DG-branded motor oil if he had known it  
24 was obsolete and not suitable for his vehicle, was not capable of protecting or  
25 lubricating his vehicle's engine, and could harm his vehicle.  
26  
27

**FOURTH CAUSE OF ACTION**  
**Violations of the Unfair Competition Law (UCL)**  
**Unlawful Conduct Prong**  
*California Business and Profession Code §17200, et seq.*  
**(on behalf of the California Sub-Class)**

103. Plaintiff incorporates by this reference the allegations contained in the preceding paragraphs as if fully set forth herein.

104. The actions of Defendant, as alleged herein, constitute illegal and unlawful practices committed in violation of *Business & Professions Code* § 17200, *et seq.*

105. Defendant has unlawfully marketed, advertised and sold its DG-branded motor oil because: (1) it is violating sections 1770(a)(5), 1770(a)(7), and 1770(a)(9) of the CLRA, *Civil Code* § 1750, *et seq.*; (2) it is violating *Business & Professions Code* § 17500; and it is violating California *Civil Code* sections 1792 & 1791.1(a).

106. Plaintiff and other putative class members were misled, and, because the misrepresentations and omissions were uniform and material, presumably believed that DG-motor oil was capable of lubricating and protecting modern day vehicle engines and would not harm them.

107. Pursuant to *Business & Professions Code* § 17203, Plaintiff and the members of the Sub-Class seek an order of this Court enjoining Defendant from engaging in the unfair competition alleged herein and corrective advertising in

1 connection with the sale of DG-motor oil. Additionally, Plaintiff will amend this  
2 complaint to request an order awarding Plaintiff and the Sub-Class restitution of  
3 the money wrongfully acquired by Defendant by means of the unfair competition  
4 alleged herein.

5 108. Plaintiff and other members of the putative Sub-Class have suffered  
6 injury in fact and have lost money as a result of Defendant's deceptive conduct.  
7 Plaintiff would not have purchased the DG-branded motor oil if he had known it  
8 was obsolete and not suitable for his vehicle, was not capable of protecting or  
9 lubricating his vehicle's engine, and could harm his vehicle.  
10  
11

12 **FIFTH CAUSE OF ACTION**

13 **Violation of the Song-Beverly Consumer Warranty Act for Breach of  
14 Implied Warranty of Merchantability, §§ 1792 and 1791.1(a) of the California  
15 Civil Code  
16 (on behalf of the California Sub-Class)**

17 109. Plaintiff incorporates by this reference the allegations contained in the  
18 preceding paragraphs as if fully set forth herein.  
19

20 110. Plaintiff and members of the California Sub-Class are "retail buyers"  
21 within the meaning of §1791(b) of the California Civil Code.  
22

23 111. DG SAE 10W-30, DG SAE 10W-40 and DG SAE 30 are each a  
24 "consumer good" within the meaning of §1791(a) of the California Civil Code.  
25

26 112. Dollar General is a "distributor", "manufacturer", and/or "retailer" of DG  
27 SAE 10W-30, DG SAE 10W-40 and DG SAE 30 within the meaning of §1791(e),  
28 (j), and (l) of the California Civil Code.

1       113. Dollar General impliedly warranted to Plaintiff Sub-Class  
2 Members that DG SAE 10W-30, DG SAE 10W-40 and DG SAE 30 were  
3 “merchantable” as automotive motor oil within the meaning of §§ 1791.1(a) and  
4 1792 of the California Civil Code.

5       114. Dollar General breached the implied warranty of merchantability to  
6 Plaintiff and Sub- Class Members because DG SAE 10W-30, DG SAE 10W-40  
7 and DG SAE 30 (i) are not fit for the ordinary purpose for which they are used; (ii)  
8 are not adequately contained, packaged and labeled (*i.e.*, it lacked a sufficiently  
9 conspicuous caution label about the risk posed by the motor oil when used  
10 according to the directions on the product packaging); and (iii) do not conform to  
11 the promises or affirmations of fact made on the container or label (*i.e.*, that it was  
12 at all suitable to use).

13       115. Dollar General’s failure to warn Plaintiff and Sub-Class Members  
14 adequately about the defective and unsafe quality of the product was willful.  
15

16       116. As a proximate result of Dollar General’s breach of the implied warranty  
17 of merchantability, Plaintiff and Sub-Class Members sustained damages including  
18 but not limited to the receipt of goods they would not have otherwise purchased  
19 and which have or are likely to cause damage to their automobiles if used in the  
20 manner intended.

21       117. Pursuant to §§ 1791.1(d) and 1794 of the California Civil Code, Plaintiff  
22 and the members of the California Sub-Class are entitled to damages, civil  
23

1 penalties and other legal and equitable relief including, a right of reimbursement,  
2 as well as costs, expenses and attorneys' fees. Plaintiff will amend this complaint  
3 to seek damages.  
4

5 **SIXTH CAUSE OF ACTION**

6 **Violations of Song-Beverly Consumer Warranty Act for Breach of Implied  
7 Warranty of Fitness, §§ 1792.1 and 1791.1(b) of the California Civil Code  
8 (on behalf of the California Sub-Class)**

9 118. Plaintiff incorporates by this reference the allegations contained in the  
10 preceding paragraphs as if fully set forth herein.

11 119. Plaintiff and members of the California Sub-Class are "retail buyers"  
12 within the meaning of §1791(b) of the California Civil Code.  
13

14 120. DG SAE 10W-30, DG SAE 10W-40 and DG SAE 30 are each a  
15 "consumer good" within the meaning of §1791(a) of the California Civil Code.  
16

17 121. Dollar General is a "distributor", "manufacturer", and/or "retailer" of DG  
18 SAE 10W-30, DG SAE 10W-40 and DG SAE 30 within the meaning of §1791(e),  
19 (j), and (l) of the California Civil Code.  
20

21 122. Defendant specifically marketed DG SAE 10W-30, DG SAE 10W-40 and  
22 DG SAE 30 as motor oils that could be used in its customer's automobiles. At the  
23 time of the sale of the product, Defendants knew or should have known that  
24 Plaintiff and members of the California Sub-Class would (i) use DG SAE 10W-30,  
25 DG SAE 10W-40 and DG SAE 30 as motor oil and be exposed to these products'  
26  
27  
28

1 potentially harmful qualities and (ii) reasonably rely on Dollar General's skill or  
2 judgment to select or furnish suitable goods.  
3

4 123. Plaintiff and members of the California Sub-Class did in fact purchase DG  
5 SAE 10W-30, DG SAE 10W-40 and DG SAE 30 with the particular purpose of  
6 using them as motor oil for their automobiles.  
7

8 124. Plaintiff and members of the California Sub-Class did in fact reasonably  
9 rely on Dollar General's skill or judgment to furnish suitable goods.  
10

11 125. By manufacturing, marketing, and distributing such products without an  
12 adequate warning, Dollar General breached its implied warranty of fitness for a  
13 particular purpose and is liable to Plaintiff and the California Sub-Class.  
14

15 126. Dollar General's failure to warn Plaintiff and members of the California  
16 Sub-Class adequately about the defective and unsafe quality of the product was  
17 willful.  
18

19 127. As a proximate result of Dollar General's breach of the implied warranty  
20 of fitness, Plaintiff and members of the California Sub-Class sustained damages,  
21 including but not limited to the receipt of goods whose they would not have  
22 otherwise purchased and which have or are likely to cause damage to their  
23 automobiles if used in the manner intended.  
24

25 128. Pursuant to §§ 1791.1(d) and 1794 of the California Civil Code, Plaintiff  
26 and members of the California Sub-Class are entitled to and hereby seek damages,  
27 civil penalties and other legal and equitable relief including, a right of  
28

1 reimbursement, as well as costs, expenses and attorneys' fees under this Cause of  
2 Action only.  
3

4 **SEVENTH CAUSE OF ACTION**  
5 **Breach of Implied Warranty of Merchantability**  
6 **(on behalf of the Class and Sub-Class)**

7 129. Plaintiff incorporates by this reference the allegations contained in the  
8 preceding paragraphs as if fully set forth herein.

9 130. Beginning at an exact date unknown to Plaintiff, but at least since four  
10 years prior to the filing date of this action, and as set forth above, Defendant  
11 represented to consumers, including Plaintiff and Class Members, by  
12 labeling/packaging and other means, that DG SAE 10W-30, DG SAE 10W-40, and  
13 DG SAE 30 are safe and suitable for use in the automobiles driven by Dollar  
14 General's customers. Plaintiff and Class Members bought those goods from the  
15 Defendant.

16 131. Defendant was a merchant with respect to goods of the kind which were  
17 sold to Plaintiff and Class Members, and there was in the sale to Plaintiff and Class  
18 Members an implied warranty that those goods were merchantable.

19 132. However, Defendant breached that warranty implied in the contract for  
20 the sale of goods in that Dollar General's DG-branded motor oil is in fact not  
21 suitable for use in the vehicles driven by the vast majority, if any, of Dollar  
22 General's customers, as set forth in greater detail above.

133. As a result thereof Plaintiff and Class Members did not receive goods as impliedly warranted by Defendant to be merchantable.

134. As a proximate result of this breach of warranty by Defendant, Plaintiff and Class Members have been damaged. Plaintiff will amend this complaint to seek damages in an amount to be determined at trial.

**EIGHTH CAUSE OF ACTION**  
**Breach of Implied Warranty of Fitness for a Particular Purpose  
(on behalf of the Class and Sub-Class)**

135. Plaintiff incorporates by this reference the allegations contained in the preceding paragraphs as if fully set forth herein.

136. Beginning at an exact date unknown to Plaintiff, but at least since four years prior to the filing date of this action, and as set forth above, Defendant sold its DG-branded motor oils to Plaintiff and Class Members, who bought those goods from Defendant in reliance on Defendant's skill and judgment.

137. At the time of sale, Defendant had reason to know the particular purpose for which the goods were required, and that Plaintiff and Class Members were relying on Defendant's skill and judgment to select and furnish suitable goods so that there was an implied warranty that the goods were fit for this purpose.

138. However, Defendant breached the warranty implied at the time of sale in that Plaintiff and Class Members did not receive suitable goods, and the goods were not fit for the particular purpose for which they were required in that Dollar General's DG-branded motor oils are not safe or suitable for use in the vast

1 majority, if any, of vehicles driven by Dollar General's customers, as set forth in  
2 detail above.  
3

4 139. As a proximate result of this breach of warranty by Defendant, Plaintiff  
5 and Class Members have been damaged. Plaintiff will amend this complaint to  
6 seek damages in an amount to be determined at trial.  
7

8 **DEMAND/PRAAYER FOR RELIEF**

9 WHEREFORE, Plaintiff on behalf of himself and members of the Class and  
10 Sub-Class defined herein, prays for judgment and relief as follows:  
11

- 12 A. An order certifying that this action may be maintained as a class action;  
13 B. Compensatory damages as to the Sixth Cause of Action only;  
14 C. Punitive Damages as to the Sixth Cause of Action only;  
15 D. Restitution and disgorgement of the unlawful profits collected by the  
16 Defendant;  
17 E. An order providing for declaratory and/or injunctive relief:  
18 1. Declaring that Defendant must provide accurate representations of  
19 the quality of the motor oil sold at its stores;  
20 2. Enjoining Defendant from continuing the deceptive practices  
21 alleged herein; and  
22 3. Granting other extraordinary equitable and/or injunctive relief as  
23 permitted by law, including specific performance, reformation and  
24 imposition of a constructive trust;  
25  
26  
27  
28

- 1 F. Prejudgment and post-judgment interest at the prevailing legal rate;  
2 G. Plaintiff's attorneys' fees and costs of suit; and  
3  
4 H. Such other and further relief as the Court may deem necessary and  
5 appropriate.

6 **JURY DEMAND**  
7

8 Plaintiff and Class Members, pursuant to Fed. R. Civ. P. 38(b), hereby  
9 demand trial by jury on all issues so triable.  
10

11 DATED: December 17, 2015

**MILSTEIN ADELMAN, LLP**

12 /s/ Gillian L. Wade

13 Gillian L. Wade  
14 Sara D. Avila  
10250 Constellation Boulevard  
15 Suite 1400  
Los Angeles, CA 90067  
Telephone: (310) 396-9600  
Facsimile: (310) 39609635

16  
17 **KANNER & WHITELEY, L.L.C.**

18 Allan Kanner, Esq.  
Conlee Whiteley, Esq.  
19 Cynthia St. Amant, Esq.  
701 Camp Street  
20 New Orleans, LA 70130  
Telephone: (504) 524-5777  
Facsimile: (504) 524-5763

21 *Attorneys for Plaintiff*  
22  
23  
24  
25  
26  
27  
28